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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte OLA OLOFSSON, ULF PALMBLAD, and LEIF JOHANSEN

Appeal 2007-2248
Application 10/754,564
Technology Center 3700

Oral Hearing Held: January 24, 2008

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and DAVID B. WALKER, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on Thursday, January 24, 2008, at The U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Virginia Johnson, Freestate Reporting, Inc.

PROCEEDINGS

MS. HALL: Calendar Number 43, Mr. Pavelko.

MR. PAVELKO: Good morning, Your Honors.

JUDGE CRAWFORD: Good morning.

MR. PAVELKO: I'd like to start off by noting that the Examiner has withdrawn the 35 U.S.C. 112 rejection, first paragraph, so that the only rejections we have to deal with today are the prior art.

This invention has to do with the joint between two panels. When you bring two panels together and you use glue as the binder to hold them together, you're fighting hydraulic pressure. The glue is not compressible, so it's basically going to be squeezed out.

Prior to applicants' invention and as shown by the Parasin and primary reference, when you put glue in there, the glue would be forced out the top of the panel, resulting in a layer of glue on the surface of the panel. It would have to then be cleaned off at some later time when it's either dried or in the process of drying.

What applicants have done and what Parasin doesn't do is abut the top edges. That is the -- if you looked at the Parasin, panels 10 and 11, you can see that there's a hole or gap (46) between those two panels, and the Parasin specifically makes that gap. If you look at the portion of Parasin's drawing labeled 18 which is the tip of his tongue, he says that the tip of the tongue is made longer than the length of the groove, and that's found at column 3, lines 28 to about 32. The tongue is preferably longer than groove (14) is deep such that when tongue tip engages groove base (34) spaces (46) are created between drawing panel edges 27 and 29 to allow for further

expansion and contraction of the joint. That's the essential teaching of this primary reference. He wants to create a gap between panels. He has to have that in his joint.

In our joint the panel top surfaces abut and below that abutting surface, as specifically set forth in several of the independent claims, you have a cavity, and that cavity below that abutting surface is for the purpose of accommodating or permitting the glue to accumulate there. So the glue is not squeezed out onto the top, there's no gap between the panels, and it's a completely different joint.

The Examiner recognizes throughout the prosecution and even in the answer that Parasin lacks that abutting feature, but he then goes to the Finkell patent, the secondary reference, which is a completely different type of panel joint.

In Finkell, it's a glueless -- what they call now a glueless joint. There's no glue required. They're using interlocking elements here which are shown in his Figure 2, and it would be 34 and 46. 34 and 46 interlock and you don't need the glue at that point, so it's a completely different type of joint.

But even if you did use Finkell, you would have to then somehow still create the abutting top surface. Finkell says that the gap between the surfaces with his type of glue-free joint can be reduced, but he doesn't say I can eliminate that. He never says that the panel top edges or top surfaces abut, and that's really the essence of applicant's invention. They abut the top surface.

I don't see any laminate here but, you know, people are familiar with laminate. It's a shiny kind of surface. It's not like this, but it's probably

more like that there. When you put two panels together you're going to have a joint. In Parasin you've got a large gap between those two panels and it creates a ridge, you know, an unsightly ridge, and the Examiner says well, of course, dirt will accumulate there and so you want to eliminate that, but he doesn't tell you how and that's the problem with Parasin.

Parasin was the -- I guess, typical of the art prior to applicant's invention. They had the gap there. You forced the panels together. The glue squirted out and you had a problem. We come along. We abut the panel top surfaces. We provide a cavity right below that top surface or below that top surface, and that's where the glue accumulates and is then squeezed out the top.

In some of the independent claims we have even much more specific features. Like in Claim 21 we have a hole which is a vent through one of these boards, and that's shown in Figure 7 of applicant's drawings. You can see that there's a vent. There's an arrow pointing downwardly. That vent is through a board. The Examiner doesn't even try to make, you know, some kind of argument that that is found in the references. He just refers to the space between the two boards and says that's the equivalent of a vent through a board, but it's not even close to be equivalent. It's not even close to being a teaching of what we're claiming. So features like 21, 22 independent claims are not shown.

Now in 23, which is the method claim, also independent, we say that the glue disposed between the tongue and the groove is directed away from the upper surface and toward the lower surface of the boards. Again, at best, Parasin has one line that says -- okay. This is at column 3, lines 15, 16 and 17. When assembling joints, glue may be applied to the tongue and groove

profiles. The application of glue is optional. That is his entire disclosure about glue. There is no discussion about where it goes, what it does, how it's directed and so forth. The Examiner at the last minute in the answer says --

JUDGE BAHR: I'm not sure that's true. I'm not sure that's true. Doesn't it say that the spaces between 42, between the tongue bed and the groove define a gap to accommodate excess glue?

MR. PAVELKO: Right. It says accommodate it, but it doesn't say how it gets there.

JUDGE BAHR: How do you think it gets there?

MR. PAVELKO: You're asking me to speculate. You could put the glue on the tip of -- on the top and bottom surface of the tongue, right?

JUDGE BAHR: Okay, and what's --

MR. PAVELKO: I mean you could put it in the groove. I don't know. You know, it's speculation. There's no teaching. Basically there's no teaching. And what we do is, again, we're trying to overcome this hydrostatic pressure, permit the panels to be joined with glue but keep the glue away from the upper surface so that it doesn't squeeze out and mar the surface, have to be removed from the surface and so forth. And we've provided structure, as specified in the claims, and the method which directs the glue downwardly, and that's the whole point. We're taking it away from the upper surface where it's really a problem.

If it's below the upper surface -- you know, this floor sits on a subfloor of some kind, concrete or plywood or something, and whatever's down between this panel and the subfloor nobody can see once the floor is installed. So we can dump all the glue downwardly and it doesn't mar the panel assembly or create any problems of cleanup. If there is excess pooling

of glue beneath the panels, it's not a problem for installation, unsightliness or removal of the excess glue.

We do have many -- several independent claims here. I've basically talked about the first independent Claim 14, and several of the other claims share a lot of the same features. I would like to talk briefly, though, about 18, also an independent claim, which it says that the first and second board defining a gap between them and a hole and fluid communication with the gap, the hole having an opening below the groove. Again, this is shown, for example, in Figure 7 of applicants' drawings, and that opening again directs the glue below the surface of the panel.

And one other feature I would like to do is the guiding wedge which is found, I believe, in --

JUDGE BAHR: 17.

MR. PAVELKO: -- Claim 17. Right, Claim 17. Claim 17 again has a lot of commonality with Claim 14. It's also independent. But what it says is it has a tongue and a groove. And it further says the tongue comprises at least one guiding wedge on an upper surface or a lower surface whereby at least one guiding wedge contacts an inner surface of the groove.

The purpose of this guiding wedge is really to give a height, spatial, arrangement to the joint. For example, if you have like Parasin, he has a space completely around his tongue and the groove except at the very edge or tip where it contacts the groove. There's a space all the way through there. So what will happen is the panels, even though interlocked like this, will still have play in them. They will be able to move up and down, which is not, you know, a solid joint.

What we would like to do and what we have said by this is we put a

wedge -- and that's shown again in applicants' drawings. For example, Figure 1 shows one form of wedge and Figure 3 shows another form of wedge -- in which those wedges fill that space. And so it performs or makes the joint so much stronger.

The Examiner would want you to say that the front part of Parasin, and I think here he's referring to the front page with regard to Figure 1 and it would be Element 16 of the front part, would be the guiding wedge. But, again, if you look at the actual drawing as shown of the assembled parts in Figure 2, you don't really have that element in addition to the tongue. That is the tongue itself, and there is no increasing of the strength of the joint by providing the guiding wedge to fill the space between the tongue and the groove.

So I mean we do have the invention expressed in various different ways, various to the independent claims. We have some dependent features that are not at all shown or attempted to be shown by the Examiner. And at the end, as you mentioned, how does the glue get there? You know, when you look at the reference -- I can't add any more to the reference than what it says. And you can put the glue -- if you look at Parasin, you can put the glue on the top surface here. You can put the glue in here. You can put the glue, I guess, in here afterwards.

It's not clear at all how Parasin would do it. And when it's not clear, it can't form the basis of a teaching that this is the function of directing the glue in a certain direction. As I said, there's only one sentence about glue and it says it's really optional. He doesn't go into solving the problem that applicants have tried to do and have done in this case.

Are there any additional questions?

JUDGE BAHR: I have two questions. The first is Parasin has the gaps 46 up at the top --

MR. PAVELKO: Right.

JUDGE BAHR: -- which serve the purpose of allowing for expansion and contraction --

MR. PAVELKO: That's correct.

JUDGE BAHR: -- and both Appellant's invention and Finkell don't have those gaps.

MR. PAVELKO: No, Finkell does have a gap.

JUDGE BAHR: Well, it may, it may not. We'll talk about it. But you clearly don't. Appellant doesn't. How do you get around that expansion -- problem, how do you solve that?

MR. PAVELKO: The boards act as basically a unitary floor and, again, you have to envision this. For a floor this big, that's a difficult thing, but for a much smaller floor like a typical bedroom, 12 x 15 or something like that, the individual planks are maybe only 6 to 8 inches wide and you glue them together and the whole floor acts as a unit.

JUDGE BAHR: Okay. So it's because they're glued together --

MR. PAVELKO: It then expands to the end --

JUDGE BAHR: -- as a single unit.

MR. PAVELKO: -- and that's why most installations tell you you have to have a gap between the end of your floor that you're laying out and the physical wall, because it can expand, but it now acts the unitary structure.

JUDGE BAHR: But Parasin has glue, too, or optionally at least has glue, as well --

MR. PAVELKO: Right, right.

JUDGE BAHR: -- but for some reason that wasn't acting as a unitary structure?

MR. PAVELKO: No. It would be a unitary structure, but the problem with Parasin is the glue would come up on the surface.

JUDGE BAHR: Well, they're not saying they've got gaps there for -- to accommodate the glue. That gap 46 they said was there to accommodate for --

MR. PAVELKO: For expansion and contraction, right.

JUDGE BAHR: -- expansion and contraction. I'm just wondering what the difference is.

MR. PAVELKO: Well, I think there he was envisioning that there would be no glue because if it is glued together it's going to act as a unit with the next adjacent panel and then that, in turn, with the next adjacent and so forth. So I think what Parasin was doing was putting these planks together but not gluing them and that's where the expansion/contraction came in.

JUDGE BAHR: The other question I had -- oh, I'm sorry.

MR. PAVELKO: No, no. I just wanted to point out in the Finkell at column 6, line 61 to 65, it says since the interlocking relationship between adjacent flooring members limits the size of the gap allowable between adjacent flooring members, relatively long flooring members (12) can be produced. This may not be the case in other flooring systems.

So Finkell still has a gap at the upper surface and what he does abut is edges 40 and 42, as shown in Figure 2, below that upper surface. So what he does is the upper surface still has a gap between, you know, the topmost

portion, and then below that it's forced together.

And so even if you looked at this -- and the Examiner made some argument. We're trying to physically incorporate Finkell with Parasin, and I'm saying how else would somebody eliminate this gap 46 other than doing exactly the opposite of what he said, cutting off part of that nose and permitting it to come in. And if you did that to eliminate this gap, there would be basically no gap at all left between -- to accommodate any glue. So you're just increasing the problem that you would have in the prior art panels, is that the hydrostatic pressure is forcing the glue out of the joint, and then you have to deal with that excess glue. And we do it all internally or below the panel so it's not a problem to the installer or the customer. I'm sorry. You had another question?

JUDGE BAHR: The other question, I just wanted to make sure. Claim 23 in my understanding does not have the limitation about the upper surfaces abutting.

MR. PAVELKO: That's correct.

JUDGE BAHR: And the only reason I ask that question is because the Examiner applied the Parasin in view of Finkell combination and I think Finkell is relied upon for that abutting feature and I'm just wanting to make sure I'm not missing something. It looks like that application in Finkell probably was --

MR. PAVELKO: Well, again, Finkell is a glue-free. Here we clearly in the method have a glue in the joint and we're directing the glue away from the upper surface. Again, since Finkell is, you know, glue-free, it's not -- you know, that has no teaching at all.

JUDGE BAHR: It's really --

MR. PAVELKO: And Parasin, although you can make guesses or speculation as to where somebody might put glue and what might happen, he doesn't teach it. Thank you very much.

JUDGE BAHR: Thank you.

(Whereupon, the proceedings concluded.)